

From meltdown to showdown? Challenges and options for governance in the Arctic

Humrich, Christoph; Wolf, Klaus Dieter

Arbeitspapier / working paper

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Empfohlene Zitierung / Suggested Citation:

Humrich, C., & Wolf, K. D. (2012). *From meltdown to showdown? Challenges and options for governance in the Arctic*. (PRIF Reports, 113). Frankfurt am Main: Hessische Stiftung Friedens- und Konfliktforschung. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-320709>

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PRIF-Report No. 113

From Meltdown to Showdown?

Challenges and options for governance
in the Arctic

Christoph Humrich/Klaus Dieter Wolf

Translation: Matthew Harris

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Correspondence to:

PRIF (HSFK) · Baseler Straße 27-31 · 60329 Frankfurt am Main · Germany

Telephone: +49(0)69 95 91 04-0 · Fax: +49(0)69 55 84 81

E-mail: humrich@hsfk.de · wolf@hsfk.de · Internet: www.prif.org

ISBN: 978-3-942532-41-9

Euro 10,-

Summary

Over the past few years the Arctic has become the object of intense political interest. Three interacting developments created this interest: first, climate change which is causing the polar ice cap to melt is creating new opportunities and risks. While huge areas open up to resource development, this seems at the same time to also cause new geo-strategic confrontation. The second development is economic change. In Russia, Greenland, Norway and Alaska, economic well-being is highly dependent upon the exploitation of natural resources. Because on the one hand export revenues are rising for natural resources and on the other already developed sources further south have transgressed their exploitation peak, the economies of these countries drive them up North into the high Arctic. Thirdly, there has been legal change. The United Nations Convention on the Law of the Sea (UNCLOS) provides a legal framework for exploiting continental shelf resources. The Arctic states can and must assert their claims now.

Contrary to all alarmist pronouncements, however, the process of delimiting the boundaries of the continental shelf is proceeding in a relatively orderly manner. Therefore, the process is analyzed more appropriately from a governance than from a conflict perspective. The governance perspective brings to the fore a host of challenges demanding political tackling and regulation. Three normative goals must be kept in mind: peace, sustainable development as well as freedom and self-determination for Arctic indigenous peoples. When developments in the Arctic are looked at against the background of these goals, governance issues become apparent in at least seven areas.

- (1) Disputes about sovereignty and exploitation rights must be settled. Among these are maritime boundaries between some of the Arctic states, the boundaries of the respective continental shelf zones, as well as the legal status of the Northwest Passage and Northern Sea Route and of the maritime area of the Spitzbergen Treaty.
- (2) Military use of the Arctic must be regulated in such a way that it does not endanger world peace or regional stability. Better and more transparent coordination of military patrols and defense activities are called for. A nuclear disarmament initiative for the Arctic would be desirable.
- (3) Even if sovereignty and exploitation rights in the arctic passages were settled, the need for regulation of Arctic shipping would remain. This involves maritime safety, protection of the marine environment, and the infrastructure required for shipping lanes.
- (4) Challenges for sustainable utilization of Arctic resources also arise – at the international level primarily in connection with offshore oil and gas production.
- (5) The Arctic is also a global pollutant sink. Protection of the Arctic environment thus also requires global reductions in emissions. The greatest challenges in the area of environmental protection, however, derive from climate change, which is unfolding at an especially rapid pace in the Arctic.
- (6) Climate change is also changing biodiversity. In view of this, commercial fishing and protection of Arctic species must undergo major adaptation.

- (7) Finally, the living conditions of indigenous Arctic peoples must be further improved. Their present level of freedom and self-determination must at least be maintained.

The political order in which these distinct yet interrelated problems are dealt with exhibits the characteristics of a fragmented rather than a properly integrated multi-level system. Governance in the Arctic is divided among federal, national, regional, international and global levels of regulation and is split into partly overlapping sectoral domains. As a result, its reliability with regard to maintaining peace, its effectiveness in implementing sustainable development, and its contribution to the self-determination and freedom of Arctic indigenous peoples leave much to be desired.

This is the background against which we will discuss various governance options, which could lead the Arctic out of the currently fragmented situation, and examine their respective desirability and feasibility. We divide them according to their geographical scope from national to global, their functional breadth from sectoral to universal, and their ethical range from simple co-existence to establishment of a community of shared values. This yields a total of six scenarios and models for Arctic governance.

- (1) *Cooled down relationships in the Arctic and minimal cooperation.* In this scenario governance is exercised at the national level only. International cooperation only occurs to a limited degree and for specific purposes. Management of peaceful co-existence dominates the governance agenda. Such a development is neither desirable nor likely.
- (2) *Nationalization within the framework of the United Nations Convention on the Law of the Sea.* In this scenario the five Arctic rim states extend their national maritime zones geographically as far as possible, finally encompassing the entire Arctic Ocean, and also push their sovereign rights and control within their zones as far as international law would possibly permit. Governance is carried out within the framework of international treaties, but remains limited to the national level in all issues going beyond the division of sovereignty and exploitation rights, i.e. limited to the management of co-existence. Only to the extent made necessary by cross-border problems, cooperation with the neighbor in question is carried out on an informal, bilateral basis. However, with regard to the goals of sustainable development and the freedom and self-determination of Arctic indigenous peoples, this scenario is unsatisfactory.
- (3) *An Arctic Treaty mimicking the Antarctic Treaty.* In many respects, this model is the opposite of scenario B. According to this model all interested states could participate in an Arctic Treaty, even though there might be differing levels of membership as in the Antarctic case. However, the purpose would be shared administration of a common interest or human heritage. As with the Antarctic Treaty, wide-ranging goals of peace and environmental protection would be envisaged. Such a model is currently politically infeasible. However, a further argument against it is that appropriate recognition of the self-determination of the indigenous peoples would become problematic.

- (4) *An Arctic Treaty as a Regional Seas Convention.* While an Antarctic treaty model has global reach, this model represents a regional version of regulation by treaty. Membership would be limited to the Arctic states only; the treaty would be functionally comprehensive and encompass common values of the Arctic states. The OSPAR Convention could provide an instructive and reasonably successful example. Here too, however, the problem of the participation of indigenous peoples would remain, as they would presumably not be included as legal subjects in an international legal treaty. Lack of flexibility could also have a negative effect on the challenges of sustainable development.
- (5) *Actor-centered cooperation in an Arctic regional organization based on the Arctic Council.* Instead of a regional institution based on legal treaties a form of governance could be chosen which would largely function through the effective use and coordination of already existing networks of actors. Indigenous peoples, scientists, NGOs, Arctic regions, Arctic members of parliament, governments and relevant administrative units or agencies would govern the Arctic cooperatively and informally through focused networks and committees. However, existing soft law regulation by the Arctic Council is already inadequate in terms of the regulation that is needed, and further development into a regional organization along the lines of an Arctic EU is completely utopian.
- (6) *A model of integrated multi-level governance in the Arctic.* In this model existing initiatives are built upon. Each different governance challenge would be solved in a functionally specific way at the level appropriate to it, while levels and sectoral approaches would be harmonized and integrated in such a way that governance activities with different participants at each level or in specific sectors would not develop centrifugal tendencies and threaten cooperation as a whole.

We regard the final model of integrated multi-level governance as the most promising option. At present, the interests of the Arctic states do not even seem to permit envisaging negotiations on a comprehensive international legal agreement. Integrated, multi-level governance would have the advantage that it would oppose existing centrifugal tendencies in current Arctic governance with relatively modest measures. But such a model is not just a second-best substitute for a uniform convention. In general, governance has become more complex and varied than is reflected by traditional international legal treaties. Our conceptualization of integrated multi-level governance retains the flexibility and innovative power of other forms of governance without avoiding legal obligations when necessary and politically feasible.

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1. Introduction

The latest occasion when the Arctic made it onto the front pages of the newspapers and captured the attention of the public even in more southern climes occurred in the summer of 2007. At that time, a Russian expedition planted their national flag on the seabed at the geographical North Pole. The leader of the expedition, Arthur Chilingarov, had previously announced that the Arctic belonged to the Russians and that it therefore was appropriate for them to demonstrate their presence.¹ Declarations such as the one made by the Russian Security Council in 2008 of their intention to “station Russian military personnel in order to protect Russian interests” in the Arctic, and the no less regrettable decision of the US at the beginning of 2009 that “the armed forces of the United States would have to expand their ability to protect land and sea boundaries in the Arctic”,² provided fodder for alarmists. Depending on the respective point of view the alarmists either see a *climate conflict* (among others, Welzer 2010), a *natural resources conflict* (among others, Seidler 2009) or a new *security conflict* (among others, Howard 2009), or an *explosive mixture* of all three emerging in the Arctic. Newspaper headlines fit well into such scenarios, for instance reports according to which in February 2009 the Canadian Air Force drove off a Russian bomber, which in a show of strength approached Canadian air space over the Arctic on precisely the day the American President was visiting Ottawa.³ NATO is holding maneuvers in the far north with such telling names as *Cold Response* (Kefferpütz 2010: 8). It looks like a reversion to patterns of tit-for-tat behavior familiar from the Cold War when, for instance, the Americans report a submarine exercise under the ice in March 2011 and two weeks later the Russians announce the deployment of troops on the Norwegian border.⁴ How deeply the military is also involved in research missions in the Arctic is shown by a study on the strategic significance of the polar region published by the US Navy in 2009.⁵ In summary: A growing number of cautioning voices are uniting in the fear that disputed territorial claims, thirst for oil deposits and deteriorating security barriers in the polar region could lead to competition among the major powers for raw materials and traffic routes, and a fallback into forms of Arctic international relations not relying on norms and other peaceful means for goal attainment.

As already argued elsewhere (Humrich/Wolf 2011), the prognosis of conflict over Arctic resources massively loses plausibility when not only the potential *motivation* of the Arctic (and other) states to enter in such a conflict is considered, but also the relevant *restrictions* running counter to a logic of escalation.

1 <http://news.bbc.co.uk/2/hi/europe/6914178.stm> (27 March 2012).

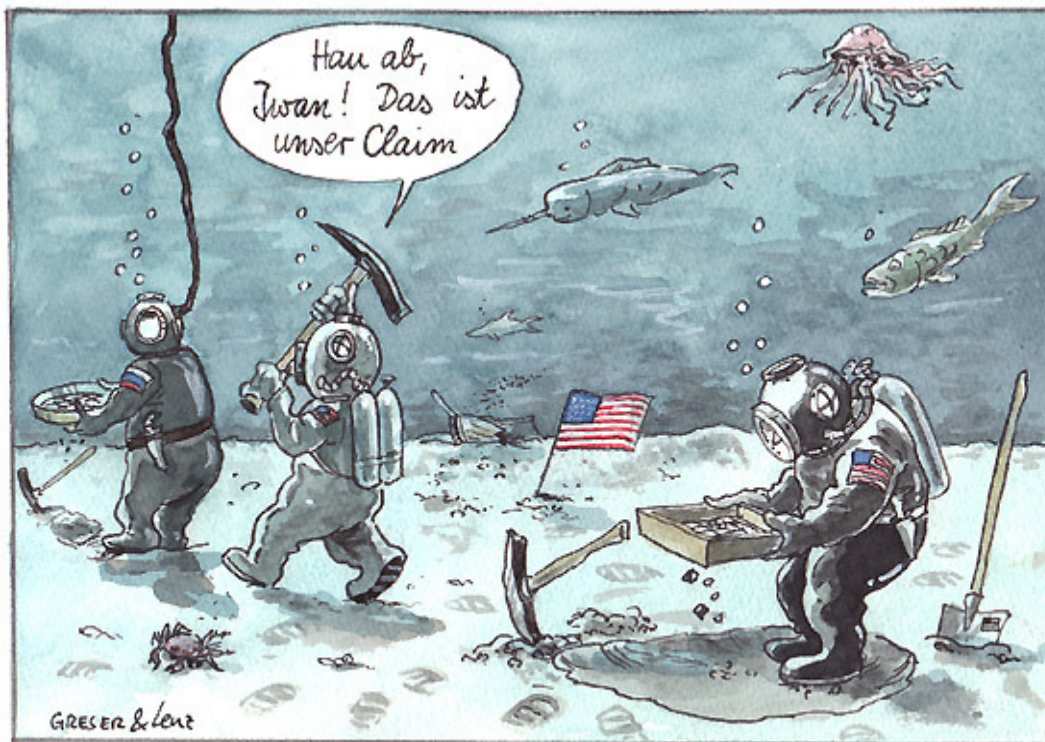
2 www.faz.net/s/RubDDBDABB9457A437BAA85A49C26FB23A0/Doc~E7C32FE14DB6D4CACB5403C358046FBCE~ATpl~Ecomcommon~Scontent.html (27 March 2012).

3 <http://news.bbc.co.uk/2/hi/7915517.stm> (27 March 2012).

4 www.telegraph.co.uk/news/worldnews/europe/russia/8419514/Russia-employs-Arctic-brigade-to-defend-oil-and-gas-reserves.html?sms_ss=email&at_xt=4d95d21bf8caa4f1,0 (27 March 2012).

5 www.sueddeutsche.de/wissen/expedition-wettlauf-um-die-schaetze-der-arktis-1.983189 (27 March 2012).

All the same, a worsening of the political situation in the Arctic continues to lie in the realm of the possible. On the one hand, it could be brought about by developments outside the region, or through feedback processes within the Arctic states. It would be possible to speak of an *externally* induced deterioration of Arctic relations if the global relationship between Russia and the US were to worsen so dramatically that existing cooperation in the Arctic could no longer absorb tensions and prevent them from spilling over into the Arctic relations. The term of office of the Bush Administration and its security policy, for instance with regard to the missile defense system, as well as the parallel Russian superpower policy in relationships with its neighboring states, as in Georgia, have shown that the potential for such worsening exists latently. With Putin now re-elected and possible future influence of the Tea Party on the White House, changes for the worse in the overall relationship between the two former superpowers could likely become reality.



*Goldgräberstimmung in der Arktis:
USA, Kanada und Russland forschen nach Bodenschätzen*

Figure 1: A gold rush atmosphere in the Arctic: the US, Canada and Russia explore for mineral reserves ("Get lost, Ivan! This is our claim!") © F.A.Z.-Greser&Lenz

In contrast, we would speak of an *internally* induced worsening of Arctic international relations if the emerging nationalistic rhetoric in connection with the question of the division of sovereignty and exploitation rights in the Arctic, above all in Canada and Russia, or the current attempt by NATO to participate in Arctic governance through the securitization of the Arctic environment, were to generate negative feedback effects. They

could create certain expectations in the respective constituencies which would then build up internal pressure on governments and reduce the latter's ability to back-off or compromise internationally.

Through a sober examination of recent developments in the Arctic we want to oppose the alarmist voices, which are possibly even fueling such internal and external developments. In contrast to these we will emphasize existing cooperation and review governance options.⁶ Three changes that are decisive for political reactions and which can be summarized under the headings climate change, economic change and legal change, form the background for this endeavor (Rob Huebert, cited in Zellen, 2009: 3).

Nowhere is Climate change more noticeable than in the Arctic. Since the 1980s the average temperature there has increased at roughly twice the pace of the rest of the world (AMAP 2011: 4).⁷ The snow and ice cover on land, the permafrost level, the Arctic glaciers and the pack ice layer on the Arctic Ocean are all experiencing increasing melting in the Arctic summer. According to the calculations of the Snow and Ice Data Center (NSIDC) in Boulder, Colorado, as a result of climate change Arctic sea ice could disappear completely during the summer months in 20 to 30 years.⁸ Together with possible, dramatic biological changes and geophysical positive feedback loops involving the climate and the oceans, this will make the Arctic more accessible (Gerdes 2011). New shipping lanes would open up around the pole. The Northeast Passage, which was already navigable for eight weeks in summer 2009, shortens the journey from Hamburg to Yokohama, Japan by 40% (Eger 2011: 180).

But the resources of the Arctic too would come within the limits of economically feasible development.⁹ Not only climate change favors such activities. Long-term developments in the raw materials market also focus interest on the Arctic. Globally, raw materials prices climbed to record levels in the crisis year 2008 and promised sizeable profits, even considered the capital intensive investment required to mine them in the Arctic. While it is true that prices have fallen again, there is no end in sight to the increasing demand from, for instance, the BRICS or newly industrializing economies. Oil deposits in the Arctic region are estimated at 13% of the assumed undiscovered worldwide supply and in the case of natural gas deposits the figure is even over 30% (Gautier 2009). At the same time, developed sources are on the way to exhaustion in the Arctic nations (Howard 2009), and new sources must be tapped. This is the case especially for Norway, Canada and Alaska. In Greenland the prospect of income from oil production is linked to the prospect of financial and, ultimately, complete political independence from

6 The authors thank Kirsten Orschulok for her support in reviewing sources.

7 www.amap.no/swipa/ (27 March 2012).

8 www.fr-online.de/wissenschaft/us-forscher--arktis-in-20-bis-30-jahren-eisfrei/-/1472788/4716056/-/index.html (27 March 2012).

9 Whereas in Russia and Alaska major energy companies are still waiting for licenses, since 2010 the Scottish energy company *Cairn Energy* has been carrying on exploratory drilling off the west coast of Greenland: www.handelsblatt.com/technologie/energie_technik/riskante-bohrungen-wenn-eisberge-auf-die-oelplattformen-zutreiben;2623265 (27 March 2012).

the former colonial power, Denmark. In Russia the economic race to catch up with the West is already going ahead through ruthless exploitation of fossil and mineral resources. In all cases, the raw materials economy is penetrating deeper into the Arctic.

This expansion finally is assisted by a legal change which had already begun in the 1970s and is now gradually showing its effects. The United Nations Convention on the Law of the Sea (UNCLOS),¹⁰ negotiated and ready for signing in 1982, came into force in 1994 with the required number of ratifications. The UNCLOS treaty divides the oceans into zones with different sovereignty and exploitation rights (Jenisch 2011). These include the territorial waters (the sea within a distance of 12 nautical miles from the coastline) and the waters of the so-called Exclusive Economic Zone (EEZ), in which the coastal state may exploit all living and non-living resources up to 200 nautical miles from the coast. However, UNCLOS also allows its members to use parts of the continental shelf extending beyond the EEZ for the exploitation of the resources of the sea floor if a respective application is approved by the United Nations Commission on the Limits of the Continental Shelf (Proelss/Müller 2008; Jenisch 2011).¹¹ In this application, it must be proven through appropriate data where the border of the continental slope is located. This can be determined in several different ways – whichever serves the respective state best (Hinz 2007). The member states have 10 years after their ratification of the UNCLOS to submit such an application. All the Arctic rim states except the US ratified the UNCLOS treaty – with submission deadlines ranging from within the first to the middle of the second decade of the new millennium.¹² This has been the main reason for the hectic activity among the Arctic states to collect the necessary data which,¹³ above all in the light of the accompanying political measures, was interpreted as a race for national appropriation of the Arctic, if not as the actual precursor of an approaching new “Cold War” over Arctic resources. Since 2007 each of the eight member states of the Arctic Council has adopted a new strategy for its national

10 United Nations Convention on the Law of the Sea (UNCLOS) 1982.

11 www.un.org/Depts/los/clcs_new/clcs_home.htm (27 March 2012).

12 Denmark ratified in 2004, Canada 2003, Russia 1997 and Norway 1996. In 2001 Russia submitted an application to the Continental Shelf Commission of the United Nations, which already contained the claims that came to the attention of Western publics only through the planting of the flag in 2007. However, the Russians were asked to improve their case and to provide additional data. This is supposed to take place in 2013 or 2014 (<http://russiamil.wordpress.com/2011/03/14/diplomacy-comes-to-the-fore-in-russias-arctic-strategy/> [27 March 2012]), but may possibly happen sooner (www.oilandgaseurasia.com/news/p/0/news/11957 [27 March 2012]). The legal procedure has been documented by the Continental Shelf Commission with all publicly available materials: www.un.org/Depts/los/clcs_new/submissions_files/submission_rus.htm (10 July 2011). Denmark/Greenland and Canada also want to submit an application by 2013/2014. Norway was assigned a 235,000 square km (90,734 square mile) area in the Arctic Ocean, granting the country the exclusive right to exploit sea floor resources (www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm#Recommendations [27 March 2012]).

13 In the summer of 2010, for instance, Russia sent the research vessel *Akademik Fjodorow*, and the US and Canada jointly sent the icebreakers *Healy* and *Louis S. St-Laurent* to the region to collect scientific data on which they can base their respective claims to the floor of the Arctic Ocean (<http://en.rian.ru/science/20100727/159962626.html> [27 March 2012]).

Arctic policy.¹⁴ In addition, in all states defense and security policy activities which can be linked to the Arctic can be observed.¹⁵ In NATO as well as the EU, related political statements have been made, and even in Germany, in addition to the press and political commentaries, political foundations and the Foreign Office have also participated actively in discussions of political challenges in the Arctic.¹⁶

Political attention suggests expectations of a possible sharpening of conflict. But nothing is eaten as cold as it comes out of the freezer. Whereas the greater part of the literature analytically subordinates the cooperation perspective to the conflict perspective,¹⁷ we see no convincing reasons for doing this (Humrich/Wolf 2011). This does not necessarily mean that scenarios which foresee a cessation of or reduction in cooperation should be completely ignored. But we want to examine them in connection with questions about regulatory instruments and organizational models for the Arctic which regard conflict management as one among a number of governance challenges, but go well beyond the avoidance of conflict escalation as the only task for governance in the Arctic.

However, our deliberations concerning an appropriate political regulatory model for the Arctic should not be confined to the drawing board of wishful thinking. We will start by introducing general normative demands on governance with regard to the Arctic (Section 2) and then identify the need for regulation and the governance challenges arising from more recent developments in the Arctic (Section 3). After a brief overview of existing approaches to regulation, which could be referred to as the status quo of governance in a fragmented multi-level system (Section 4), we will sketch out six scenarios and models of Arctic governance on the basis of political and scientific discussion of appropriate governance mechanisms, in order to show what the alternatives look like and how the need for regulation could be met in different ways (Section 5). We regard the idea of integrated multi-level governance as the most promising model for the future of

14 Denmark has finally presented an official strategy-document in 2012 (Denmark 2012). In Norway a follow-up process for the 2006 strategy is already in progress (Norway 2006, 2009 and 2011). Sweden laid down its strategy last year (Sweden 2011), Finland in the year before that (Finland 2010). The tone of Russia's security policy for the north was more conciliatory than initially anticipated (Åtland 2011). The American strategy was published in the format of a national security directive in the last months of the George W. Bush administration (US 2009). The Canadians have an internal strategy and a statement of Arctic foreign policy which supplements this (Canada 2009; Canada 2010). For an evaluation and the contents of the Icelandic strategy see the master's thesis by Gudmundsson (Iceland 2009; Gudmundsson 2010). For an overview and comparison of policy documents see Brosnan et al. (2011) and Heininen (2012).

15 For good overviews with appropriate sources see Kraska (2011) and Trent (2011).

16 For an overview of EU policy in the Arctic see Kennedy (2011). NATO examined the topic at, among other things, a seminar in Iceland (www.nato.int/cps/en/natolive/news_49745.htm?selectedLocale=en [27 March 2012]). In addition to an internal workshop in 2008 the German foreign office organized major international conferences on current topics in the Arctic 2009 and 2011. The important foundations of the German political parties, Friedrich-Ebert-Stiftung (Social Democrats), Hanns-Seidel-Stiftung (Rill 2010) and Konrad-Adenauer-Stiftung (both Conservatives) have each held conferences on the Arctic. The Heinrich-Böll-Stiftung (Greens) also published a paper on the topic (Kefferpütz 2009).

17 See Emmerson (2010), Fairhall (2010), Marx (2010), Matz (2010), Anderson (2009), Haftendorn (2009), Howard (2009), Sale (2009), Seidler (2009) and Zellen (2009).

governance in the Arctic. As the last step we want to discuss its political feasibility and indicate measures which could be suitable for promoting its realization (Section 6).

2. Normative Requirements of Governance in the Arctic

With Ernst-Otto Czempel one can distinguish between three important areas of conflict, each with its own logic: security, rule and welfare (Czempel 1981: 198). The corresponding normative goals that can be assigned to these issue areas are *peace, freedom and self-determination* as well as *sustainable development*. From these goals we derive our yardstick for judging the various Arctic governance models.

2.1 Peace

It is a fact that since the Second World War there have been no important military incidents in the Arctic.¹⁸ However, this does not mean that the Arctic has not been the scene of armed confrontation. It rightly became a symbol of the Cold War. Here, the then superpowers directly confronted each other. This did not necessarily mean that the region had the greatest strategic significance within the military logic of the blocs.¹⁹ But it was here that submarine fleets, bomber patrols and interceptors had direct contact with the enemy (see for example Young 1992; Osherenko/Young 1989; Tunander 1989). Therefore, it may not have been by chance that the end of the Cold War had its origins in the Arctic. The famous 1986 second summit conference of Reagan and Gorbachev in Reykjavik admittedly was a failure, but one that left the doors wide open for follow-up negotiations. In the following year Reagan made his famous speech at the Berlin Wall and Gorbachev replied with his momentous speech in Murmansk. The latter was highly regarded in particular in the Nordic countries and had major consequences for the Arctic (Scrivener 1989; Åtland 2008).²⁰ Gorbachev called for the Arctic to be made a region of peace and environmental protection. By doing so he laid the foundation for later international environmental cooperation in the Arctic, which came into existence on the initiative of Finland and with Canadian support (Humrich 1999; Young 1998). While peace does not appear as an explicit goal of these cooperative efforts, this absence is probably attributable only to the fact that, since the end of the confrontation between the two rival blocs, peace is regarded as a given.

The dramatic cooling of relationships between Russia and the West in the Bush era, and especially after the Russian intervention in Georgia, shows that events at the global

18 In the so-called Cod Wars between Britain and Iceland from 1958 to 1976 weapons were actually fired. However, luckily the isolated exchanges of fire did not lead to any fatalities.

19 Opinions on its strategic significance are divided (Zellen 2009; Osherenko/Young 1989).

20 The text of this speech is available at: www.barentsinform.fi/docs/Gorbachev_speech.pdf (27 March 2012).

level can generate tensions in the Arctic too.²¹ In addition, it cannot be excluded, that the political exploitation of disputes over the Arctic in domestic campaigns generates a negative momentum and also backfires on the international level (Humrich/Wolf 2011; Byers 2009). Still, the recent history of cooperation in the Arctic can be read, above all, as a history of confidence-building and thus peace-promoting measures (Purver 1991; Young 1992). Regional cooperation in the Arctic even created spillovers for peace-related policy at the global level and could continue to generate them. In this sense, Paul Berkman is right that attention should continue to be paid to peace as a political goal in the Arctic (Berkman 2010).

2.2 Freedom and Self-Determination

With the exception of Russia, the Arctic states count among the stable and liberal democracies in which freedom and self-determination have by and large been achieved. At the international level, however, there is still a need to specify the limits of each state's self-determination by clarifying jurisdictional competences and boundaries, for instance at sea, and to deal cooperatively with cross-border infringements of the sovereignty of one state by another. But also domestically, the goals of freedom and self-determination continue to be relevant for governance in the Arctic with regard to indigenous Arctic residents. For centuries they were the victims of direct or so-called internal colonialization (Dryzek/Young 1983 and Young 1992). The demands of the indigenous peoples for self-determination have received increasing attention since the 1970s. This is neither solely nor primarily attributable to a change in mentality among the non-indigenous population, but above all to the more effective organization of the indigenous peoples themselves in articulating and asserting their rights. The Arctic indigenous peoples identified relevant norms of indigenous self-determination on the one hand in ILO Convention 169 and the United Nations Declaration on Indigenous Peoples, and on the other in their own declarations of their cultural and political identity and sovereignty.²² In April 2009 representatives of the Inuit of Greenland, Canada, Alaska and Russia presented the Circumpolar Inuit Declaration on Arctic Sovereignty. In it they describe themselves as a single people distributed across four nations and stated their position on questions such as "Who owns the Arctic?" "Who can traverse the Arctic?" and "Who has rights to develop Arctic resources?" They base their claim to be entitled to participation in political decision-making on the argument that only they possess the traditional knowledge that will be necessary for an effective Arctic governance regime, as well as on the view that, as those directly

21 Even before the Russian intervention in 2008, Baev believed that the aggressive reaction to the Russian flag-planting action at the North Pole could only be understood in terms of the global tensions which were revealed in Putin's controversial speech at the Munich security conference (Baev 2007).

22 See the United Nations Declaration on the Rights of Indigenous Peoples, 2007 and the Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169), 1989. Of the Arctic nations, only Denmark and Norway have ratified the convention to date.

affected, they have a right to self-determination and equal participation.²³ While a great deal has been achieved since the 1970s (Wilson 2007; Øverland 2009; McBeath 2010), there is a need in all Arctic states, above all, however, in Russia, to further build up the freedom and self-determination of indigenous Arctic residents and to preserve what has already been achieved in this regard in the light of the new international and transnational developments in the Arctic.

2.3 Sustainable Development

Czempiel originally understood the area of welfare politics as the arena for settling conflicts over the distribution of material goods. However, in the context of the so-called limits to growth the goal of sustainable development came more and more into the foreground in political discussions of welfare. Sustainable development is made up of three elements: Prosperity, conservation of ecological balance and natural resources for coming generations, and solidarity and fair distribution of resources and economic benefits (Langhelle 1999; the German parliament's Enquete Commission on the "Protection of People and the Environment" 1998). These goals are also relevant for governing the Arctic. Without economic development of the resources of the Arctic region, Arctic indigenous peoples will not have sufficient means to exercise their freedom and self-determination effectively (Riabova 2010). For this reason, it is necessary that they have an equitable share in the profits from new resource development. In addition, the Arctic is a bioregion of the earth, which possesses unique, still largely unspoiled but also sensitive ecosystems and wilderness areas. On account of their breathtaking beauty and indomitable nature these are globally highly valued.²⁴

3. Areas of Action and Need for Regulation

When the three major governance goals described in section 2 are considered in terms of the developments in the Arctic and the political reactions to them as sketched in the introduction, seven fields emerge which call for Arctic regional governance. To these we turn in this section.

3.1 Clarification of disputed sovereignty and exploitation rights

The assignment of sovereignty and exploitation rights in the Arctic (see also the map "Sea boundaries in the Arctic" in the appendix) involves four main issues: The issue of the

23 The declaration can be seen as a reaction to the exclusion of the indigenous peoples from the meeting of the so-called "Arctic 5" in Ilulissat in 2008 and in Charleston in 2010. See *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*: www.inuit.org/index.php?id=429 (27 March 2012). See also Osofsky (2007).

24 In practice it has unfortunately been shown that operationalization of sustainable development was highly contentious as a political goal and still is – at least when it comes to its economic and social components of sustainable development. For this reason a concept of sustainable development with these dimensions is only visible by induction (Humrich 1999 and Young 1998).

division of the continental shelf has dominated the media. Currently, many observers see the real source of conflict here, since Canada as well as Russia and Denmark/Greenland are laying claim to overlapping areas around the Lomonossov Ridge as extensions of their respective continental shelves (Hinz 2007). The US has made declarations partly intended to safeguard its rights, but cannot itself submit an application with the Continental Shelf Commission because it has not yet ratified the UNCLOS treaty. But the Americans will certainly not fail to exploit the resources of their continental shelf, even though they are not party to the treaty.

The second issue involves the lack of clarity concerning exploitation rights on the Spitsbergen continental shelf and maritime area. The Spitsbergen Treaty of 1920 assigns sovereignty over the archipelago to Norway, but requires non-discriminatory access and exploitation rights for all signatory states to the treaty. The treaty is too old to have incorporated the relevant provisions of the Law of the Sea. For this reason there is now disagreement about whether and how the maritime zones around Spitsbergen fall under the treaty and what exploitation rights the parties have (Russia in particular is making demands here) (Pedersen 2009; Pedersen 2006).²⁵

The third issue with regard to sovereignty and exploitation rights concerns unresolved maritime boundaries. The most critical conflict in this regard has now been settled. By a bilateral treaty in September 2010 Russia and Norway determined their maritime boundary in the Barents Sea (Hønneland 2011).²⁶ Nonetheless, there are still disagreements between Canada and Denmark/Greenland in the Baffin Strait over the boundary between the two nations in connection with Hans Island; between Canada and the US concerning the maritime border in the Beaufort Sea; and between the US and Russia in the Bering Sea. In the latter case a treaty already exists which even has been ratified by the American Senate, but has not yet been accepted by the Russian Duma and for this reason may have to be renegotiated.²⁷

Fourthly and finally, both Russia and Canada claim extensive jurisdiction over the potential shipping lanes along their coasts. Canada regards the waters of the Canadian Archipelago as internal waters, in which the unlimited exercise of sovereign rights is possible. Russia employs the same arguments as Canada with regard to some stretches of the Northern Sea Route (Duyzings 2011). Both states have placed the so-called baselines, which according to UNCLOS define the limits of internal waters, very generously around their coastlines and islands. The US and the EU have protested against this practice and demanded that the waters be recognized as international straits in which the rights of passage for shipping nations are even more extensive than within EEZs (Byers 2009).

25 Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British Overseas Dominions and Sweden Concerning Spitsbergen, 1920.

26 Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, 2010.

27 Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, 1990.

3.2 Guaranteeing the Security of the Arctic Nations

In recent years challenges to security in the Arctic have been discussed mainly in terms of conflicts over the assignment of sovereignty and exploitation rights. A great deal depends upon whether the still unresolved border disputes among the Arctic nations will fall back into pre-legal patterns of conflict resolution if the now legally regulated processes do not produce the results that satisfy the powerful states. However, it must be admitted that, independently of the clarification of sovereignty and exploitation rights, other security issues arise – above all for Canada and Russia (Howard 2009). This is because with the ice a natural security barrier is melting away and opens up a new flank on the northern side for both states: something which must be taken into account in security and defence policies.²⁸ In this vein transnational terrorism is increasingly being used as a justification for military measures ranging from military participation in securing the borders to maneuvers, rearmament and tailored procurement.²⁹

In addition, strikingly noticeable efforts by NATO, which is searching for new assignments, to present “normal” problems of cooperation in the Arctic as security matters can be observed. Thus, the NATO Science for Peace and Security Programme (SPS) functions as a sponsor of research on environmental threats to security in the Arctic Ocean. The goals of this research are “identifying and evaluating environmental security risks with regard to the weaknesses of international institutions in this region of vital importance to the world and assessment of possibilities and institutional options for cooperation, including the ongoing use of scientific cooperation as an instrument of diplomacy, in order to overcome environmental security risks in the Arctic.”³⁰

3.3 Regulating Arctic Shipping

Regulation of shipping is neither only a question of respective enforcement authority in a particular and possibly contentious area alone, nor is it only limited to security policy challenges. Though there is relatively little oceangoing traffic near the North Pole and along the Arctic shipping routes as of today, traffic is steadily increasing – even if inten-

28 What is meant by “third nations” is usually China. See Fairhall (2010), Jakobson (2010), Lassere (2010), Howard (2009), Seidler (2009).

29 In the course of coming to terms with these changes, however, some rather remarkable perceptions of threat and astonishing scenarios came up (Byers 2009).

30 See in this connection: <http://ecologic.eu/de/3567> (27 March 2012). Russia observed this attentively and responded to the securitization with a remarkable step toward de-securitization: In order to keep NATO out of the Arctic, instead of security policy interests the possibilities of peaceful cooperation for maintaining the ecological system in the region are now being emphasized to a greater extent such as in the fall of 2010 through the convening of an international conference with the motto “The Arctic – Territory of Dialog” in Moscow. On 15 September 2010 Russia’s then President Medvedev warned against a stepping up of NATO’s presence in the Arctic region, stating: “We can do without NATO in the Arctic for that is the sector of our shared natural resources which, strictly speaking, has nothing to do with military tasks.” At the same time, these movements and counter-movements indicate that there is a realistic range of alternatives for developing joint objects and shared goals in working toward more intensive Arctic cooperation, possibly also within the framework of a “human security” approach.

sive commercial use of the Northern Sea Route and the Northwest Passage is still scarcely to be expected in the coming decades (Eger 2011), there has, nevertheless, been year-round transportation of goods – primarily raw materials – into and from the Russian Arctic. In addition, tourist traffic with cruise ships around Greenland and in the eastern Canadian Arctic has risen exponentially in recent years (Arctic Council 2009; ECON 2007). Increasing traffic calls for measures in four areas (Brigham 2010).

Firstly, there is concern about maritime safety. A large proportion of the cruise ships encroaching upon the Arctic were not originally constructed for these waters. Because a corresponding maritime infrastructure is lacking, the safety of the ships often depends on the experience of the regular officers and crew. However, to date the International Maritime Organization (IMO) still has no training standards in place for Arctic conditions.³¹ The second type of measures is related to protecting the environment and Arctic indigenous peoples. The corresponding challenges are to be mentioned later in this report, therefore we will not go into them in detail at this point. Thirdly, measures will be necessary regarding infrastructure. These measures would address issues starting with insufficient cartographic material, in particular for the Russian and Canadian Arctic, and extend to gaps in satellite coverage of the Arctic for shipping communication and route monitoring as well as marking/identifying individual shipping routes, ending with a lack of icebreaker, tugboats, search and rescue units and harbor capacity. The costs for the required investments will probably be beyond the means of the Arctic rim states. Finally, the countries would have to harmonize their respective national regulations in the areas of safety and the environment as well as streamline approval procedures where appropriate, if shipping traffic is to operate smoothly.

3.4 Preserving and Utilizing Living Arctic Resources and Biodiversity

Investigations of Arctic biodiversity come to the conclusion that it is not yet in serious danger (Arctic Council 2002; Arctic Council 2010; UNEP 2010). Though it is true that some species, highly symbolic mammals in particular, among which is the polar bear, are in part in a critical state, many species have stable or, due to intensive protection measures, even increasing population counts. However, there are fears that three factors and their interaction could cause problems in the future. Climate change and its effects on individual Arctic species such as the polar bear, already effectively dramatized as a movie-length documentary,³² is the key problem in this regard. As a result of climate change, new species are encroaching upon the Arctic and threaten to displace endemic flora and fauna. But economic development also endangers biodiversity in the Arctic by introducing pollutants, through land use and consumptive, non-sustainable use of Arctic species.

31 A major step was achieved with the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic signed at the meeting of the Arctic Council on 12 May 2011.

32 Both in Al Gore's "An Inconvenient Truth" (http://movies.universal-pictures-international-germany.de/eineunbequemewahrheit/ait_live/ait_live/ [2 April 2012]) as well as in the film "Planet Earth," which numbers among the most successful documentary films in Germany (www.universumfilm.de/video/sales/movie.html?ID=29aad41b-59a0-4d3a-888d-12e90fe0e26f [27 March 2012]).

There is insufficient scientific data available to be able to specifically determine the way these factors interact and assess the consequences this may have for Arctic biodiversity. Intensified research on Arctic biodiversity and the conditions of its human use, monitoring of populations for valid identification of sustainable catch limits as well as an inter-linked system of protected areas, in particular maritime protected areas, are therefore necessary with regard to conservation. But these must be augmented by climate and environmental protection measures.

3.5 Reducing the Introduction of Pollutants into the Arctic and Adapting to Climate Change

Climate change and the introduction of pollutants into the Arctic not only impair Arctic nature and wilderness but especially the quality of life of the people living there. The Arctic Council has focused most strongly in this regard on determining consequences of climate change and harmful emissions. The *Arctic Monitoring and Assessment Programme* (AMAP), the largest and most active working group within the Arctic Council, has prepared reports widely recognized also outside the Arctic domain: the *State of the Arctic Environment Reports* (SOAERs: AMAP 2006; AMAP 2002; AMAP 1997) and the *Arctic Climate Impact Assessment* (Symon 2005). The findings of the SOAERs show that the Arctic and its inhabitants are pollutant sinks for harmful emissions from the rest of the world. Consequently, the high levels of various pollutants have already led the Arctic states to corresponding initiatives or active political participation in negotiations on global environmental treaties. Noteworthy and most prominent among these are the Stockholm Convention on the reduction of *persistent organic pollutants*, (POPs) from 2001³³ and the only recent commencement of negotiations for a Mercury Convention (AMAP 2011).³⁴ But there is also an ongoing need for action, above all in the Russian Arctic, with regard to contamination by radioactive nuclear materials (AMAP 2009).

As a result of climate change, there is a need for *adaptation in* the Arctic and a need for *action beyond* the Arctic. Climate change is taking place in the Arctic about twice as fast as in the rest of the world. Even though, as described above, the warming of the Arctic might offer new prospects for exploitation, it could also have negative economic consequences. These include migration of commercially used species, melting of permafrost layers which will make travel difficult and threaten the architectural infrastructure, as well as the premature melting of sea and river ice routes, which have until now made “land travel” between Arctic communities possible for most of the year (AMAP 2011; Symon 2005).

33 Stockholm Convention on Persistent Organic Pollutants, 2001: www.pops.int (27 March 2012).

34 www.unep.org/hazardoussubstances/MercuryNot/MercuryNegotiations/tabid/3320/language/en-US/Default.aspx (27 March 2012).

3.6 Sustainable Exploitation of Fossil and Mineral Raw Materials in the Arctic

It is true that there have been and still are isolated attempts to bring an end to or delay further mining of mineral resources in the Arctic, but it is certain that such exploitation will happen in the future. There are already significant mining and extraction industries in the Arctic (see the maps in Sapper/Weichsel/Humrich 2011), which are often not oriented towards sustainability. Neither was attention paid to ensuring that the extraction of raw materials would guarantee employment and community development benefits beyond the boom period, nor was protection of the fragile Arctic environment around the sites particularly high on the agenda. Consequently, sustainable exploitation of resources in the Arctic presents three aspects which should be dealt with through appropriate governance measures: for one, economic sustainability. This means, for instance, helping to build up an infrastructure which offers opportunities for development after the exhaustion of the resources; secondly, maintaining a speed of exploitation which leaves sufficient time to seek out substitutes for following generations and thirdly, not treating the environment in such a way during extraction that it is contaminated in the long term with harmful consequences for human beings and nature. Political attention here is largely focused on the possible risks and consequences of offshore oil drilling in the Arctic (AMAP 2007). Worst fears of course are nourished by the *Deepwater Horizon* spill in the Gulf of Mexico.

3.7 Improving the Living Conditions of the Indigenous Peoples and their Possibilities for Participating in Shaping the Future of the Arctic

Taking account of the demands for self-determination of the indigenous peoples and improving their living conditions present a challenge of a special kind for Arctic governance (Bankes 2004). About a tenth of the four million inhabitants of the Arctic belong to the indigenous peoples. Thus, part of the problem lies in guaranteeing appropriate representation of their interests in relevant sub-national political units. With increasing international and transnational governance, non-Arctic states are also becoming active in Arctic cooperation forums, and are thus reducing the possibilities for indigenous peoples to exercise influence.

Without stronger influence of the indigenous peoples in regional Arctic political committees and within the Arctic states, however, it is unlikely that the indigenous peoples will be able to achieve decisive changes in their living conditions. These peoples have to contend with the physical and psychological consequences of their marginal political, economic, social and ecological existence. The loss of cultural identity and lack of economic resources lead to social problems which are often self-perpetuating: alcoholism, high suicide rates and low educational qualifications. If the demands of the indigenous peoples in the Arctic are accepted as legitimate, there is no way to avoid both making exploitation of economic resources, which they need to shape their future, possible for them, as well as committing considerable investment in the build-up of infrastructure required for this.

4. Status Quo: Governance in the Arctic as a Fragmented Multi-level System

In contrast to the Antarctic, the Arctic region is not the subject of *one single* comprehensive treaty regime. However, the Arctic is also nothing like the under-regulated region it is sometimes depicted as being. The regulations and agreements at global, regional or bilateral level pertaining to the governance challenges outlined above have more the appearance of an uncoordinated patchwork of different, partly overlapping approaches to regulation with varying memberships. In addition, there are regulations which differ from nation to nation and which are partly further complicated by federal distribution of powers. In short: The political status quo in the Arctic consists of a governance regime which is fragmented in several respects.

On the one hand, this is the result of its historical legacy. Until the beginning of the 1990s, international relations in the Arctic were immobilized in the Cold War. As a result of the confrontation between the rivaling blocs, a comprehensive international regime for the Arctic remained beyond what was politically feasible. This seemed to change with Gorbachev's Murmansk speech, which was part of his policy of *détente* and laid out a vision of the Arctic as a model of regional cooperation between East and West. Gorbachev's initiative was taken up by Finland. The Arctic Environmental Protection Strategy (AEPS) with the "Arctic 8" – Finland, Sweden, Norway, Iceland, Denmark/Greenland, Canada, the US and Russia – was developed in the so-called Rovaniemi process. The AEPS in turn laid the foundations for negotiations on the Arctic Council, which came into existence in Ottawa in 1996.³⁵

The Arctic Council could have become *the* regional organization for the Arctic, but basically it merely affirmed the already existing informal cooperation of the AEPS. Security-related matters were explicitly excluded from the cooperation. Politically, the negotiations made on the Council made it clear that the rights of indigenous peoples or questions of economic development were not to be dealt with in the Arctic Council directly. In addition, the Arctic Council had to struggle every time to elicit the interest of the US. On the basis of its self-image as a global power, from the very beginning the US did not want to commit itself to cooperative efforts which would have signaled special interest in a particular region (Humrich 1999). Anyway, as an institution encompassing the entire Arctic, the Arctic Council is confronted with other sub-regional institutions in or reaching into the Arctic, such as for example cooperation in the Barents Euro-Arctic Region,³⁶ in the Nordic Council³⁷ or within the northern dimension of the EU.³⁸

On the other hand, the fragmentation is also caused by functional challenges which various actors saw themselves as facing. The resulting patchwork of cooperative or regula-

35 Declaration on the Establishment of the Arctic Council (Ottawa Declaration), 1996.

36 www.beac.st/in_English/Barents_Euro-Arctic_Council.iw3 (27 March 2012).

37 www.norden.org/en (27 March 2012).

38 www.eeas.europa.eu/north_dim/index_en.htm (27 March 2012).

tive efforts reveals itself in a cursory examination of governance in the seven areas of action outlined above.

The questions of *sovereignty and exploitation rights* are all regulated in the UNCLOS treaty, it is true, but they conflict in the area around Spitsbergen with the older Spitsbergen regime, to which in turn non-Arctic states including Germany and Great Britain belong. In addition, the US has not yet ratified UNCLOS and relies on international customary law.

Security policy, which is excluded from the Arctic Council, is conducted *bilaterally* between Russia and the US, but also between individual Scandinavian states – especially Norway – and Russia, *multilaterally* within NATO and between NATO and Russia, within the EU and also within the Nordic Council. In addition, there is an Arctic Military Environmental Cooperation (AMEC), which was brought into existence by Norway, the US and Russia, to deal with the major problems facing the Russian Northern Fleet in disposing of the nuclear propulsion units of its decommissioned ships along with their waste products.³⁹

With respect to *rules on maritime traffic*, the publications of the Arctic Cooperation themselves refer to a mosaic of different rules (Arctic Council 2009: 50). These are based on the one hand on the principles and standards of UNCLOS, which however assign certain rights to the various coastal nations regarding their territorial waters, neighboring areas and also their EEZs. These rights are spelled out and applied differently by the individual states. Alongside these, of course, the conventions of the International Maritime Organization (IMO)⁴⁰ are applicable, such as for instance the MARPOL Convention⁴¹ and its protocols, or the SOLAS Convention on the safety of ships and seafarers and the as of yet non-binding Polar Shipping Code.⁴² In addition, the conventions of the International Labor Organization (ILO) relating to seafarers apply to crews in the Arctic.⁴³ Within the Arctic Council, at least two working groups are also involved with shipping: The working group on Protection of the Arctic Marine Environment (PAME)⁴⁴ and on Emergency Prevention, Preparedness and Response (EPPR).⁴⁵ Recently, the Arctic Council has paved the way for a convention between the Arctic States on search and rescue in the Arctic.⁴⁶

39 Declaration of the Department of Defense of the United States of America, the Royal Ministry of Defence of the Kingdom of Norway, and the Ministry of Defence of the Russian Federation, on Arctic Military Environmental Cooperation (AMEC), 1996. Great Britain also later participated in the AMEC cooperation. See: www.denix.osd.mil/international/InternationalCooperation/EUCOM/AMEC.cfm (2 April 2012).

40 IMO (www.imo.org [27 March 2012]) also developed non-binding standards that relate to the Arctic in several of its areas of activity; for example Polar Shipping Safety Guidelines: www.imo.org/OurWork/Safety/SafetyTopics/Pages/PolarShippingSafety.aspx (2 April 2012).

41 International Convention for the Prevention of Marine Pollution from Ships (MARPOL), 1973.

42 International Convention for the Safety of Life at Sea (SOLAS), 1974.

43 www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang-en/index.htm (2 April 2012).

44 www.pame.is (27 March 2012).

45 <http://eppr.arctic-council.org> (27 March 2012).

46 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, 2011: http://arctic-council.npolar.no/accms/export/sites/default/en/meetings/2011-nuuk-ministerial/docs/Arctic_SAR_Agreement_EN_FINAL_for_signature_21-Apr-2011.pdf (3 April 2012).

In the Arctic Council, the Arctic Monitoring and Assessment Programme (AMAP) and the Arctic Contaminants Action Plan (ACAP) are concerned with *environmental protection and climate*.⁴⁷ Currently, at least eight international treaties which regulate aspects of environmental and climate protection and also include the Arctic region are in force.⁴⁸ The OSPAR Convention,⁴⁹ which is concerned with reducing contamination of the northeast Atlantic with pollutants, covers at least a small sector of the Arctic, which stretches from the north Atlantic to the North Pole alongside the East coast of Greenland. In its sector, OSPAR also regulates *offshore mining of fossil and mineral resources*. Intergovernmental regulation of this problem area only becomes necessary when the mining of resources takes place in areas with a background of international regulation (for instance seabed beyond EEZ) or has the potential for cross-border impact. This would be the case, for example, with offshore oil drilling in the Arctic. However, except for the non-binding guidelines of the Arctic Council and the IMO there are scarcely any regulations that can be applied to the entire Arctic (Koivurova/Molenaar 2010).

In the case of exploitation of *living resources and protection of biodiversity* in the Arctic, the fragmentation reflects both political-economic sensitivities and also the influence of animal welfare and environmental protection movements in individual states. There are treaties for individual species such as the polar bear treaty⁵⁰ or the Agreement on the Conservation of African-Eurasian Migratory Water Birds (AEWA), which was negotiated within the framework of the Bonn Convention on the Conservation of Migratory Species of Wild Animals.⁵¹ In addition, the polar bear is listed in the appendix of potentially endangered species in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁵² There are two fishery organizations for the North Atlantic (NAFO and NEAFC) and one for the protection of

47 www.amap.no und www.ac-acap.org (27 March 2012).

48 Correl (2007: 5) lists the following agreements in this connection: the Vienna Convention for the Protection of the Ozone Layer, 1987; the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987: ozone.unep.org/new_site/en/index.php (2 April 2012); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989: www.basel.int; the United Nations Framework Convention on Climate Change, 1992; the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 1997: www.unfccc.org (27 March 2012); the Convention on Biological Diversity, 1992: www.cbd.int (27 March 2012); the United Nations Convention to Combat Desertification, 1992: www.unccd.int (27 March 2012); and the Stockholm Convention on Persistent Organic Pollutants, 2001 that has already been mentioned.

49 Convention for the Protection of the Marine Environment of the North-East-Atlantic (OSPAR), 1992: www.ospar.org (27 March 2012).

50 International Agreement on the Conservation of Polar Bears, 1973.

51 Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 1995; Convention on the Conservation of Migratory Species of Wild Animals, 1979: www.cms.int (27 March 2012).

52 Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973: www.cites.org (27 March 2012). At the conference of signatory states of CITES in Doha in 2010 the US introduced a motion to place polar bears on the list in Appendix 1, which would have led to a total ban on trade in polar bear products. However, as a result of the resistance of the other Arctic states this was not carried (www.ens-newswire.com/ens/mar2010/2010-03-18-02.html [27 March 2012]).

salmon in the North Pacific (NPAFC).⁵³ In the case of whales, the International Whaling Commission (IWC) is actually responsible.⁵⁴ However, because of their dissatisfaction with this body Norway, Iceland, Greenland and the Faroe Islands founded the North Atlantic Marine Mammal Commission, whose responsibilities cover small whales and Pinnipedia (NAMMCO).⁵⁵ In addition to these, comprehensive conventions, such as the Convention on Biodiversity (CBD) and the Ramsar Convention on the Protection of Wetlands are applicable.⁵⁶ In the Arctic Council, the working group CAFF is chiefly concerned with the conservation of Arctic nature and individual species.⁵⁷

In connection with the *living conditions and rights of indigenous people* in the Arctic, the indigenous people themselves favor ILO Convention 169, which has already been mentioned, but which, of all the Arctic states, only Denmark and Norway have ratified so far. Apart from these, there are sub-regional regulations such as those of the Nordic Council, or bilateral agreements such as those between Norway and Russia. Within the Arctic states, however, the indigenous peoples' legal status differs widely from state to state and thus affects their demand for participation at international level differently (McBeath 2010; Riabova 2010; Wilson 2007).

Simply identifying a fragmented system of regulation on its own does not say very much. Whether and to what extent this becomes a problem depends on the extent to which the normative goals stated at the beginning are accomplished or not.

So far fragmentation has had no negative influence on the goal of *peace*. On the contrary: It is obvious that it has been possible to cushion tensions which arose in global relationships between the superpowers or between NATO and Russia from time to time at the bilateral level or in functionally subordinate committees and to use the numerous existing contacts for confidence-building measures. However, the exclusion of security issues from cooperation in the Arctic Council may possibly have come at a high price: no region-specific cooperation on security policy in the Arctic has occurred and security cooperation has been less open to the engagement of civil society and thus for instance suggestions of a nuclear weapons-free Arctic (Hamel-Green 2011; Vestergaard 2010).

This draws attention to the somewhat less positive balance of this fragmented system of regulation with regard to the *freedom and self-determination of the inhabitants of the Arctic*, especially indigenous Arctic peoples. They are already complaining about a lack of financial resources for effective participation in the meetings of working groups of the Arctic Council and cannot afford to participate actively in all forums, regimes or

53 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO), 1978; Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries (NEAFC), 1980; Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (NPAFC), 1992.

54 International Convention for the Regulation of Whaling, 1946: www.iwcoffice.org (27 March 2012).

55 Agreement on Cooperation in Research, Conservation and Management of Marine Mammals in the North Atlantic, 1992: www.nammco.no (27 March 2012).

56 Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR), 1971: www.ramsar.org (27 March 2012).

57 www.caff.is (27 March 2012).

organizations relating to them at international level. Thus, fragmentation limits the fairness of participation and potentially subjects the Arctic indigenous peoples to regulations in whose formulation they themselves were not sufficiently involved. Fragmentation has other effects on the possibility of transnational self-organization by the indigenous peoples. As the membership of states in institutions varies and the national participation rights of the indigenous peoples are differently formulated in each state, influence on governments can often only be channeled nationally.

With regard to *sustainable development* the different national regulations on shipping are currently making a more rapid development of an Arctic infrastructure and transnational interactions difficult. With regard to protection of the environment, nature and resources, we can speak, on the one hand, of redundancies and on the other, of gaps, as well as of ineffectiveness because of lack of binding agreements or the absence of stronger compliance mechanisms. The Arctic Council is already perceived at the outset to be an institution without regulatory powers, but only a forum that generates information and is capable of formulating agendas (Stokke/Hønneland 2007).

The attention which has been paid to the Arctic in recent years has therefore also led to options for possible development or enhancement of the current governance structure being discussed.

5. Models and Scenarios for Arctic Governance

Discussion about the possible spectrum of “Arctic regime options” (Rothwell 2008) proceeds along several dimensions. The first dimension, that of *geographic reach*, runs along a continuum which goes from individual states at one extreme to global at the other, and pertains to the question of whether governance should be unilateral or bilateral (at the national level), or jointly run by states of the Arctic region (regionally) or include other or even all (interested) members of the community of nations (globally). One could thus say that unilateral and bilateral as well as regional or global regulatory modes are conceivable.

The second dimension, *functional reach*, runs along a continuum with sectoral and universal poles. It pertains to the question of whether regulation should be comprehensively provided for in one legal document or within one organization or with functionally specific norms and/or institutions for each subject matter requiring regulation. Thus, there are conceivable forms of governance in which either a large number of individual sector specific treaties would stand side by side or a comprehensive treaty covered all functional areas of Arctic policy.

The third dimension pertains to the question of whether states organize only their peaceful coexistence or pursue shared values and objectives going beyond this. We call this dimension *ethical reach*. States could rely on the traditional so-called law of coexistence only, which merely obligates states to refrain from interfering in the sovereign realm of other states. But of course states could also mutually agree on positive duties in the sense of the so-called international law of cooperation and thus move towards an Arctic community. Underlying this variance are different visions of the Arctic, ranging

from mere geostrategic region, via an area for economic exploitation or to the perception of the Arctic as an ecosystem and a cultural as well as political region, for the conservation of which there is joint responsibility and a common system of values.

Cross-cutting these dimensions is the question of whether Arctic governance can be organized between nations on their own or whether sub-state and non-state, transnationally organized players should be involved. Moreover, the degree of legal robustness underlying governance approaches can vary: Are they based on soft law and voluntary cooperation, or are they legally binding? At the same time, the distinction between more formalized institutional approaches and those of a more informal kind play a role in the debates on governance options, as do varieties of regulative forms like more hierarchical top-down, more horizontal or even bottom-up.

Working with this categorical framework, six institutional options of Arctic governance can now be outlined. These are also represented in the literature with reference to varying empirical precedents and examples. The first is a scenario of *minimal cooperation* within a renewed East-West conflict or within other, escalating conflict situations. Although we consider this scenario highly improbable it remains a possibility, which we thus also wish to discuss here. The second scenario is that of a *nationalized order* in the Arctic within the legal context of UNCLOS. The third is a regulatory model based on an Arctic Treaty parallel to the Antarctic Treaty, the fourth an Arctic Treaty based on a Regional Seas Convention. The fifth is a model of institutionalized Arctic governance which would reinforce the Arctic Council as a regional organization. Finally, we present the model which appears the most promising to us. It has the advantage of representing a development scenario that is not completely improbable. We call it *integrated multi-level governance* – in contrast to the status quo of fragmented multi-level governance.

5.1 Back to the Future? The Historical Reality of the Cold War

The image of escalating conflict in the Arctic has been around for a long time in the media and political journalism. A new Cold War over resources in the Arctic was feared. An argument put forward by members of the scientific community was that due to a “creeping arms build-up” in the polar region, conflicts which had long been “frozen” could turn into “potentially dangerous tensions” (Haftendorn 2009). But even if this scenario were to become reality, the history of the Cold War shows that governance would still take place in the Arctic on a limited scale. In its *geographic reach* governance would, however, remain largely limited to the respective national regulations. None of the governments would be able to or want to pursue its claims or other political objectives based on broader cooperation in the Arctic. Individual international legal documents such as the Polar Bear treaty or the Spitsbergen Treaty would continue to elicit compliance, as was the case during the Cold War, at least as long as there are no decisive strategic reasons in favor of sacrificing law in exchange for political objectives. However, by and large law and legal obligations would be subordinated to power considerations (Marx 2010). Security policy would again dominate political agendas and overshadow other *functional requirements*. Cooperative efforts not legally institutionalized would collapse. That does not mean that

no cooperation is possible. But the sector specific management of security policy for the Arctic would take place, if at all, bilaterally among the former superpowers or between NATO on the one side and Russia on the other. The *ethical reach* would remain limited to peaceful coexistence within a strategic regional theatre.

It seems clear that such a scenario is not desirable. Though (negative) *peace* would possibly be maintained, it would only do so with the known costs and risks of nuclear deterrence. For the *freedom and self-determination of* indigenous peoples and Arctic residents a dramatic step backwards would result, because Arctic-specific interests would be subordinated to security policy considerations. *Sustainable development* of the Arctic could likely not materialize within a unilateral, functional specific and ethically narrow framework. Thanks to the uncertainties for capital-intensive resource development, transnationally supported economic development of the Arctic would also stagnate. It would, if occurring at all, run along the old lines of a center-periphery structure within the Arctic countries and thus jeopardize efforts to achieve the desired lessening of Arctic residents' dependence on the respective centers.

5.2 Nationalization in the Framework of UNCLOS

An international cooperation in the Arctic founded on UNCLOS could claim that it is based on an international regime recognized as a "just and legal order" (WWF 2009: 17) with "considerable flexibility" (Rothwell 2008: 6) for both determining territorial and exploitation claims and the peaceful resolution of disputes as well as for maritime law and maritime environmental protection. International lawyers consider the unresolved legal questions connected to these issues in the Arctic region an important test of how UNCLOS can be executed (Proelss/Müller 2008: 687).

The flexibility of UNCLOS is demonstrated, among other ways, by the fact that it uses and interlinks three distinctly different concepts of organization: namely, liberalization, internationalization and nationalization. The *liberalizing concept* ("freedom of the seas") is most clearly expressed in the shipping regulations and maritime rights in force in international waters. The high seas belong to no-one, and the same right of use exists for all parties. Distinct from the "freedom of the seas" principle, UNCLOS specifies an *internationalizing* concept of organization for the seabed beneath the high seas. The seabed is in no way *terra nullius* – the resources lying there belong to all humankind as common heritage. The center of the international seabed regime is the International Seabed Authority (ISA).⁵⁸ This authority grants licenses to countries allowing them to explore and exploit sea-floor resources. These countries can in turn give companies mining rights within the acquired claims.

Nationalization of the world's oceans is found in UNCLOS as the third – and dominant – organizational principle in variants related to state territory and to rights of use. With the new determination of coastal waters in UNCLOS, the seaward border of natio-

58 The ISA as its headquarters on Jamaica: www.isa.org.jm (27 March 2012).

nal territory was extended to 12 nautical miles. In addition to this, by setting up the 200 nautical mile exclusive economic zone (EEZ), a functional nationalization was established which did not connote a sovereign territory but granted coastal nations exclusive resource use rights within this zone. While the EEZs, to the extent that no such zones overlap, marks the minimum extension of national exploitation rights, the continental shelf regime allows coastal nations considerably larger expansion of exploitation rights.

The provisions of UNCLOS clearly specify that there is no “no-man’s land” that can be occupied in the Arctic region but instead either areas over which no country can exert exclusive claims because they lie beyond the border of the continental shelf; or areas which are part of the territorial seas, EEZs or extended continental shelf and thus legitimize only coastal nations’ rights to exploitation and differing levels of rights of usage and sovereign control. The Arctic rim states Denmark/Greenland, Canada, Norway, Russia and the US can already exploit their respective EEZs extending into the Arctic pursuant to the rights determined in UNCLOS. Applications for continental shelf extending beyond EEZs have to be reviewed by the UN Commission on the Limits of the Continental Shelf. But the application itself only constitutes exercising a right of the Arctic rim states which already exists. The application only entails determining the outer borders of the exploitation zones on the continental shelf, and clarifying coastal states’ exploitation rights accordingly.

In the nationalization scenario the Arctic rim states would prioritize UNCLOS’ *national* principle at the expense of the other two organizing principles in three regards. First, the part of the Arctic continental shelf suitable for commercial use in the foreseeable future would be completely divided up. Secondly, Canada and Russia would draw straight baselines encompassing the largest possible expanses of water in which they would be entitled to complete sovereign control and deny any existence of international straits in order to control the northern shipping lanes nationally. Finally, all Arctic rim states would interpret the rights for regulation and control in the EEZs accorded by UNCLOS and also the restrictions on the freedom of the sea permitted in the EEZ and on the continental shelf very broadly and use them to assert quasi-territorial sovereignty in these zones too. Of course, the objection might be raised that utilization going beyond the EEZ only relates to the seabed and not to the water-column. But, even though, in principle, international law allows free use of the high seas over the continental shelf by third parties, control and regulation rights could be claimed by the coastal states for the water-column too, using relevant loopholes in the law in favor of the coastal states.⁵⁹

Although from a legal standpoint this clearly contradicts the spirit of the law of the sea, politically the respective scenario seems not unlikely. In the setting-up of UNCLOS itself, states bowed to the power of the facts and legalized the unilateral expansion of coastal zones, and in this way yielded to the trend for nationalization. The five Arctic rim states allowed no doubt to remain that they intend to strive for the largest possible broadening

59 This refers to the rights of the Arctic coastal states and the duties of all other states in the continental shelf zones.

of their national utilization zones. It is definitely not unrealistic to assume that the Continental Shelf Commission, which makes recommendations on claims by the coastal states, will endorse the maximum demands of the applications, as the history of its recommendations up until now shows. This history is not surprising. Although the commission is a committee of scientists, they of course also are representatives from states, which want their own applications to be approved. This has led in the meantime to very generous mutual recognition such as in the case of the Kerguelen Plateau and its recognition as part of the Australian continental shelf (Hinz 2011).

Canada and Russia, have already established straight baselines – still under ongoing protest from third parties at the present time. By means of a rather broad interpretation of the so-called ice paragraph in UNCLOS, which allows restrictions to be placed on ships outside territorial waters in the EEZ too if these are sailing through ice, Canada and Russia have already demonstrated their desire to nationalize freedom of the sea in their coastal regions. This observation remains valid even if attention is drawn to the related protests of the US and the EU. For, if these two were to enter into bilateral negotiations with Canada or Russia in order to formulate transit regulations for the two Passages, the national principle would only be reinforced (Byers 2009) – even if the parties were to impose the condition that they were not a precedent for appropriate legal measures.

Within the framework of a nationalization scenario, border disputes would be dealt with bilaterally, conditions of utilization unilaterally, and cross-border issues through negotiations between the states involved, preferably in informal committees which would preserve autonomy, such as the mini-multilateralism of the “Arctic G5”, i.e. among the rim states alone.⁶⁰

The Arctic rim states’ acknowledgement of the law of the sea in the Ilulissat Declaration and the possibilities it offers for settling disputes should not be underestimated, however, because it reconciles the nationalization model with the *goal of peace*. At the same time, the Ilulissat and the later Charleston meeting of the “Arctic G5” foster fears that in future the Arctic rim states will discuss “high level ocean policy issues” in small informal groups, while the Arctic Council, with its “broad focus and soft work on environmental protection and sustainable development” will be forced into a marginal position (Koivurova 2009: 6). The ruthless exploitation of nature in northern Russia gives rise to doubt that a nationalization strategy is the best for preservation of the Arctic. At the same time, economic development would probably particularly profit from unitary rules for all coastal zones. This speaks against the extension of national control as a strategy for *sustainable development*.

As far as the goal of *freedom and self-determination* is concerned, Rothwell (2008) concedes that the law of the sea offers a basis for a comprehensive Arctic treaty, but does not cover all regulatory requirements in the Arctic. Thus, a new regional treaty

60 This mini-multilateralism was laid down in the Ilulissat Declaration of 28 May 2008. In Ilulissat, Greenland the five Arctic coastal states (Denmark/Greenland, Norway, Russia, the US, and Canada) met for the first time in order to discuss the division of the Arctic continental shelf.

comparable with the Antarctic Treaty “respecting pre-existing Arctic sovereign rights [...], the rights of indigenous people, [...] includ[ing] the eight Arctic States as core members, with associated membership for non-Arctic States which had significant interests in the region” has been advocated (Rothwell 2008).

5.3 An Arctic Treaty System

The example for an internationally-oriented model of Arctic governance is the Antarctic Treaty of 1959 and the system of treaties that has since come into existence in connection with it. Such an option for arctic governance has been proposed by international law scholars and also by the EU Parliament. They clearly regard the Antarctic Treaty System as a success story. Although the Antarctic Treaty does not yet contain the formulation of a common heritage principle, which was laid down in UNCLOS and is the basis for the exploitation regime for the deep seabed, nonetheless there is already reference to the “interest of all mankind” in its preamble.⁶¹ The background of the Antarctic Treaty arises from territorial claims, whose “freezing” was agreed upon in an “agreement to disagree.” By the end of the 1940s there had already been minor military exchanges between Great Britain, Argentina and Chile. Today, seven states lay claim to partly overlapping areas (for a more detailed presentation see Wolf 1992: 255-257). Behind these claims lay not least the motive of economic exploitation of fish stocks and the resources believed to be present on the Antarctic mainland and in the area of the continental shelf, which range from coal to copper, all the way to oil and gas deposits. Territorial conflicts were defused through an agreement to deal with them at a later date. The scope of the treaty especially encompasses the prohibition of military use, a framework for research on the continent for exclusively peaceful purposes, and the conservation of its living treasures. The treaty did not contain any sections on exploitation of resources.

The Antarctic Treaty was expanded into the Antarctic Treaty System through additional conventions that differ with regard to substance, spatial scope and membership.⁶² The so-called Madrid Protocol on Environmental Protection in the Antarctic from 1991 is the last addition to the Antarctic Treaty to date. Its goal is to establish a comprehensive environmental protection system for the Antarctic and prohibit all activities connected with exploitation of resources until 2041.

If the Arctic rim states proceeded according to this model they would have at least to waive their exploitation claims beyond their EEZs under the condition that the rest of humanity would have to agree to jointly organized use or that exploitation would (for the time being) be completely banned. A model based on the Spitsbergen Treaty, according to

61 The Antarctic Treaty, 1959: www.ats.aq (27 March 2012).

62 Protocol on Environmental Protection to the Antarctic Treaty (Madrid Protocol), 1991; Convention for the Conservation of Antarctic Seals (CCAS), 1972; Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), 1980. The Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), 1988, did not come into force because its contents were made obsolete by the Madrid Protocol. See also Young (2011: 329).

which one state has sovereignty but cannot block other signatory states from exercising certain exploitation rights would not be quite so extreme.

Membership in such a treaty would be open to all, and its *geographical breadth* therefore global. This does not preclude the possibility that, as with the Antarctic Treaty, which distinguishes between consultative and non-consultative status of members,⁶³ it could contain special members' rights – for instance for the Arctic rim states. In terms of its *functional scope* the treaty could either be comprehensive or, as is the case *de facto* with the Antarctic Treaty, it could be formulated as a framework and then extended through further relevant agreements whenever the need for them arose. Modeled on the Antarctic Treaty system, the *ethical scope* of such a contract would clearly go beyond a simple arrangement for coexistence. The Antarctic Treaty promulgated the principle of peaceful coexistence early in the Cold War. The continent was declared a zone of peace and in effect demilitarized. But the Antarctic Treaty and its supplementary conventions also contain detailed rules on environmental protection with positive duties, which exemplify the law of cooperation proper.

The verification system is described as exemplary (Hamel-Green 2011). In comparison with existing Arctic governance that would represent progress in security policy. If an Arctic Treaty copied the Antarctic Treaty in this respect a positive *effect on peace* could be anticipated.

As far as the goals of *sustainable development* and *freedom and self-determination* for the indigenous peoples of the Arctic are concerned, the crux of a transfer of arrangements from one pole to the other reveals itself. For the Antarctic Treaty system can be characterized as a “hierarchical, collectively isolated system for preserving privileges in the interests and under the control of a self-designated group of states” (Wolf 1992: 266). This is in itself sufficient to render the Antarctic Treaty an inappropriate model for political regulation of the Arctic region. From an international law perspective, over and above that lies the objection that beside the claims to sovereign and usage rights in the maritime zones, there are no unresolved land claims in the Arctic, the freezing of which formed the core of the Antarctic Treaty. Although there are unclarified maritime zone borders in the Arctic region, there is no *terra nullius*: “Under no circumstances may it be considered as occupiable no man’s land” (Proelss/Müller 2008: 655). In addition, there are people living in the Arctic who are dependent upon using Arctic resources. Given this fact, banning of all exploitation claims will and should not occur. If, in this context, the Arctic were internationalized, then *freedom and self-determination* would disappear and inevitably with them the influence of the Arctic population over their own living space. The terrible specter of a reservation would loom: indigenous peoples as a protected species in an international Arctic refuge.

But, at the moment, the Antarctic model does not have the slightest chance among the Arctic rim states. Its reference to “an agreement to disagree” itself indicates that the

63 A state can acquire consultative status if it conducts ongoing scientific research in the Antarctic. The states with consultative status have voting rights alongside the states with territorial claims in the Antarctic.

Antarctic Treaty came into existence under very special and perhaps unique circumstances. Among these circumstances was the situation in which it was possible to remove a region from world conflict; a situation where there was still no technological possibility of exploiting raw materials under the prevailing harsh conditions and in which the corresponding territorial claims had not yet been determined and regulated. Even in the Antarctic itself the prospects for a new Antarctic Treaty would no longer be all that promising today.

5.4 Regional Institution: The Arctic Treaty as a Regional Marine Convention

The following two models fall between nationalization and (global) internationalization. They would have a *geographical scope* limited to the Arctic region. The first would be an Arctic Treaty parallel to a Regional Sea Convention. Regional Seas Conventions are attributable in part to initiatives of the coastal states of a few marginal seas and to some extent one of the most successful projects of the United Nations Environment Programme (UNEP). In order to improve the protection of marginal seas and sea regions the program actively supported the building of such regional sea regimes.⁶⁴ The AEPS is listed as an action plan among associated partners of the Regional Seas Program. Thus, it would “only” need to be transformed into an equivalent “hard law” version.

The Regional Seas Conventions came into existence primarily as environmental protection agreements and consequently they are more restricted in their *functional scope* than, for instance, the Antarctic Treaty. This does not, however, mean that their regulatory contents must of necessity be narrowly formulated. The concept of sustainable development, let us say, retains enough integrative freedom that all the governance challenges mentioned above, except may be for security, could be answered.

Finally, a regional convention might possibly provide even more flexibility with regard to *ethical scope* than a global document, because the boundaries of the community of values are more narrowly defined and larger overlaps might occur as a consequence.

The OSPAR Convention could provide a model. The treaty territory of the convention even already includes a small portion of the Arctic – east of Greenland up to the North Pole – and has already made provisions relevant to the Arctic. In addition, the London-based OSPAR Commission also works on Arctic themes (OSPAR 2000). What continues to weigh in favor of the OSPAR model is that it is one of the most stringent maritime conventions. Its underlying approach of an integrated management of ecosystems is being praised as the newest development in effective environmental governance.

The environmental component of the objective of sustainable development would thus be assured. Because the North Sea, which falls under the OSPAR area, is also an intensively used economic region, it apparently does not rule out a robust economic component. Peace, however, is missing as a normative goal in this regional maritime con-

64 www.unep.org/regionalseas/ (27 March 2012).

vention, and there might also be issues with a view to the Arctic indigenous peoples if no innovative changes on the OSPAR model were carried out.

Even if such a regional treaty were not as utopian as a copy of the Antarctic regime, it would still fall short of what is political feasible at this time. In their Ilulissat Declaration, the “Arctic G 5” have made it quite clear that they see no need for a new and comprehensive international legal document. Koivurova and Molenaar (2010) accordingly propose a “legally binding framework, based on existing protocols.” The regulations which exist should be included in a comprehensive treaty which transforms the Arctic Council from an exclusive “soft law body” to an inclusive “hard law body.” The authors of the study also propose the inclusion of the indigenous population as a party to the treaty (Koivurova/Molenaar 2010: 89 ff). However, if one considers the problems which already occurred when negotiations were held on the Arctic Council – a soft law forum – regarding the question of inclusion and the rights of indigenous peoples, it is improbable that their recognition as legal entities could even be negotiated (Humrich 1999). As with the Antarctic Treaty, an OSPAR model would remain classically intergovernmental. In addition, there would also be the risk that existing established standards would be called into question once more if they were once again up for discussion in the negotiations towards a new legal document. It is also not even remotely clear whether legalization in all functional areas would necessarily be more effective than soft-law standards. Regarding certain provisions covering traffic or resource exploitation, it might in fact be more advantageous to be able to respond flexibly to new technological developments by applying soft standards.

5.5 Regional Organization: Actor-oriented Governance

However, perhaps an approach, which focuses on setting norms is not the right one anyway. An alternative approach is based on actors. The Arctic Council has an inclusive but clearly hierarchical structure consisting of members (the eight Arctic nations), permanent participants (the organization of indigenous peoples) and observers (intergovernmental organizations, NGOs, countries active in the region). There are six non-Arctic nations with permanent observer status including Germany and Great Britain.⁶⁵ The Arctic Council plays an important role in all discussions on the future Arctic regime, albeit with varying views on its level of importance. Firstly, it is viewed as the point of departure and institutional core for an integrating framework agreement, and then again as a central coordination body and finally also as a blueprint for a quasi-transparent, formalized multilateralism in miniature. It is not an international organization in the formal sense, and thus lacks a mandate in international law. A ministerial conference is held every two years. The Arctic Council has six working groups, which are occupied with environmental protection and sustainable development, but also with the establishment and maintenance of an Arctic environmental monitoring system.⁶⁶ The Council’s description of itself

65 www.arctic-council.org/index.php/en/about-us/partners-links (3 April 2012).

66 www.arctic-council.org/index.php/en/about-us/working-groups (3 April 2012).

is that of a “high level forum” which strives “to provide a means for promoting cooperation, coordination and interaction among the Arctic States with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues.” The Arctic Council functions “by consensus of the Members” and on the basis of political recommendations which are not legally binding. Nevertheless, it is considered capable of handling a future role as an interdependence manager which adapts to the Arctic, adopts and puts into practice existing partial regulations, for instance from UNCLOS, as it has already done in the case of its Arctic Offshore Oil and Gas Guidelines (1997, 2002).

Since the Arctic Council’s founding more than 15 years ago, the situation in the Arctic has changed dramatically due to climate change and also due to political and legal developments; a widely held assessment of scientific observers is that the Arctic Council in its prevalent form can no longer or no longer by itself and alone work effectively as a governance arrangement for the Arctic.

If the actor-centered perspective of the Arctic Council were retained, models of post-national governance could be worked out in which – as for example in the EU – sub-state players or transnational parliamentarians could be involved. In this regard the Arctic Council is lagging behind similar bodies such as the Barents Euro-Arctic Council, which has a strongly sub-national component centered on regions, or the Council of the Baltic Sea States⁶⁷ both of which are better able to bring together a diverse group of players at one table, or to be more exact, at a large panel. There even are circumpolar representations of parliamentarians and regions existing (Standing Committee of the Parliamentarians of the Arctic⁶⁸ and Northern Forum⁶⁹). The transnational organizational wave triggered by the AEPS and the Arctic Council caused a “regionalism fever” among euphoric proponents of the Arctic who envisaged the Arctic as developing a strong regional organization and be governed as a global region with institutional division of powers among the various representative bodies. However, this vision lacks not only societal but also political prerequisites. Koivurova (2009: 8) concludes that “overall, it does seem that there is not much willingness in the council to make any but simple cosmetic changes to its structure or working methods.”

5.6 Integrated Multi-level Arctic Governance

For this reason a true-to-life model has to take into account that a comprehensive, fully integrated governance system is not likely to emerge within the foreseeable future. Nor is it desirable, given that the issues to be regulated “vary in terms of their ripeness for international agreement, the roster of relevant actors, the spatial extent of the relevant problem, the auspices under which negotiations can go forward, and the nature of the ar-

67 www.cbss.org (27 March 2012).

68 www.arcticparl.org/committee.aspx (27 March 2012).

69 www.northernforum.org/ (27 March 2012).

rangements likely to be adopted” (Young 2011: 330).⁷⁰ Following the lead of the scientists of the Arctic Governance Project around Oran Young⁷¹, the most realistic option appears to us to be to integrate the previously fragmented multi-level governance by means of improved communication and inter-institutional norms. Stokke (2007: 10) states about this: “Given the political impediments to reaching circumpolar agreement on a single comprehensive legal regime, [...] the best answer would seem to be a flexible approach to norm-building that seeks productive interplay with existing institutions.” At the same time there will continue to be frictional losses as well as redundancies. Their damaging effect should however be mitigated and compensated for by correspondingly increased and improved coordination. Integrated multi-level governance appears to be an option worth striving for, not only because of the fact that a comprehensive Arctic Treaty as a “strong hard law body” is extremely improbable owing to the clear resistance of the five Arctic coastal states, but also for functional reasons, in view of the divergence in demands for regulation and legitimacy which must be met with sufficient flexibility and differentiation. Therefore, structural levels and regulation requirements must be treated distinctly. Differences in regulatory problems (“dilemmas of common aversion,” “dilemmas of common interests”) in connection with “varying degree(s) of incompatible interests among actors involved” (Claes/Østerud 2010: 19) also require differing regulatory instruments – legally binding or having the character of recommendations, whether prohibitive or supportive. Flexibility and adaptability would have the highest priority: “Governance arrangements dealing with complex and dynamic socio-ecological systems should place top priority on devising procedures that allow for flexibility and adaptability in the face of rapid change and high levels of uncertainty” (Arctic Governance Project 2010: 12).

The responsibilities of the Arctic governance arrangement in this framework would be similar to those of UNEP for international environmental policy. Certain areas requiring regulation can be worked out at global level such as regulation of shipping and a border regime, while others may be worked out at the sub-state level. All agreements and instruments are coordinated by means of the Arctic Council’s policy guidelines and interlinked based on “nesting.” For this reason, expansion of the Arctic Council to make it the central coordinating forum within such an integrated, flexible, transparent and inclusive governance system for the Arctic suggests itself (see also Correll 2007 and 2009; Vanderzwaag/Huebert/Ferrara 2002: 170; Bloom 1999). This multi-level model with the Arctic Council as its central element could be combined with fundamental principles for achieving the goals of peace, sustainable development and freedom and self-determination. These would first have to be distilled from already existing approaches to regulation. For this purpose, the Arctic Council would presumably need moderators or appropriate “facilitators” in the sense UNEP works. The result could be a declaration mirroring the previous recommendations of the Arctic Council, except that it would have

70 Accordingly, Young favors an Arctic governance or regime complex “encompassing a number of distinct yet interrelated elements” and “able to establish distinct regulatory provisions and decision making procedures that are well suited to the character of separable issues (Young 2011: 333, 330).

71 www.arcticgovernance.org/ (27 March 2012).

a more important role, namely that of a second founding document. Armed with this, the Arctic Council could seek to make Memoranda of Understandings on Arctic Policy with relevant international administrative bodies and units and international organizations active in the Arctic. These would incorporate the principles and agree upon an appropriate division of responsibilities.

However, the basic principles at the level of the Arctic Council would not have especially strong effects if they did not also filter into the responsible administrative and national as well as sub-national decision-making committees. For this reason the building of cooperative networks with actors active in the circumpolar area and with the center defined by the Arctic Council would be necessary. Joint workshops and efforts at integration at the level of working groups would also belong to the main responsibilities of the Arctic Council.

6. Chances of Realization and Prospects for the Future

We see one advantage of the integrated multi-level governance arrangement advocated here as lying in the fact that it offers the actors a realistic development scenario, in particular because it might well be consistent with the interests of the Arctic rim states.

The US is a key actor (see on this Lundestad 2010: 9; Conley/Kraut 2010: 26; Sheridan 2010). But it is also a *latecomer* to Arctic cooperation as far as the formulation of a clear Arctic strategy is concerned (Borgerson 2008: 64f). It is not an exaggeration to say that the US has participated in the Arctic Council only because of its friendship with Canada. Until 2011 no US minister had ever participated in the ministerial meetings. Under the Obama Administration this seems to have changed – although the most recent formulation of American Arctic policy was one of the final acts of George W. Bush's presidency. It derives from the National Security Presidential Directive and Homeland Security Presidential Directive of 9 January 2009 (US 2009). In it, the US defines itself as an “Arctic nation” with “varied and compelling interests in that region”, which seeks to strengthen existing institutional mechanisms, integrate indigenous communities in decisions involving them. The document also makes it very clear that an “Arctic Treaty” after the pattern of the Antarctic Treaty is “not appropriate or necessary.” The responsibilities of the Arctic Council should remain “within its current mandate.” As a “high-level forum” it should not be transformed into a formal international organization (US 2009), but should participate in the setting of norms for Arctic governance. An integrated multi-level system would accommodate American interest in excluding security and sovereignty issues from this forum. A further motive for the US Government to retain and strengthen the Arctic Council could result from the internal bi-level interaction between Washington and the state of Alaska. There are conflicts with Alaska about nature and environmental protection requirements in general and the opening up of new oilfields off the Alaska North Slope and in the Arctic National Wildlife Refuge. Both regions are subject to Washington's authority. Although drilling in the latter would set off an outcry among environmental lobbyists in Washington, as a result of the *Deep Water Horizon* debacle the former has been halted for the time being. The Alaska state government

would like to drill, but regards itself as stifled by Washington's environmental restrictions. The pressure by Fairbanks on Washington would be reduced by drawing attention to international commitments.

What is striking about *Canada's* position is largely the symbolic exaggeration of the north as a core part of national identity: It is expressed in slogans like "our North, our heritage" (Canada 2009: 1; Sciallo 2008), or in the line in the national anthem "The True North strong and free." Linked to this is strong emphasis on the role of indigenous inhabitants as "self-reliant individuals" with centuries-old respect for the Arctic environment. Even the exploitation of Arctic resources is justified with the argument that it would create a foundation for the well-being of this portion of the population. "Sovereignty and stewardship" are additional key concepts with which the special responsibility of Canada to protect the region is underpinned (Griffiths 2009). In this sense, the Canadian Foreign Minister stated in March 2009: "We are affirming our leadership, stewardship and ownership in the region" (Huebert 2009: 22). Also justified in this way are increased efforts to establish a military presence and measures for monitoring shipping routes, the latter of which was already stipulated as a primary national responsibility in the Arctic Waters Pollution Prevention Act (AWPPA) of 1970. "Canada can and *is currently* enforcing administrative control over the Arctic waterways. The definition of control must be modernized to include environmental and cultural preservation. [...] Those nations who question Canada's commitment to enforcing sovereignty or want only to consume resources from a distance must submit to a new, equitable direction of sovereignty determination" (Gordy 2010: 596; see also Byers 2009).⁷² In addition to recognition of the waters of the Arctic Archipelago as internal waters, it is important for Canada that indigenous peoples retain their chance to participate. Domestically, Canadian Inuit have a very strong political voice. This is an argument in favor of strengthening forms of cooperation which make that voice heard also at the international level, and it is also an argument against forms extending to others the right to have a say at the expense of the Inuits' chances to participate in a meaningful way. At the same time, the Canadians could hope that transfer of the environmental standards of the AWPPA to shipping in the whole Arctic would make control of their waters easier. However, it is necessary to wait and see how the Canadian stance towards Arctic cooperation develops. The Canadians were the driving force behind the Arctic Council. Not just under Prime Minister Harper the main work for the Council has been carried out by the Scandinavians. His government, however, is also showing tendencies towards a nationalistic and unilateral approach to Arctic policy that has been atypical until now. For the Canadians, who at the time of the foundation of the Arctic Council had conceded much of their great plans for Arctic institutions to political expediency, now a strengthening of Arctic institutions in the sense of stronger legalization is out of the question.

Russia regards the Arctic as "a strategic resource base" (Russia 2008: 2), from which a substantial contribution to solving the social and economic challenges the country is

72 See Proelss/Müller on possible justifications in international law for Canada's claims (2008: 656-661).

facing is expected. A superordinate goal of Russian Arctic policy is “to maintain the role of a leading Arctic power” (Russia 2008: 9). Little remains of the cooperative attitude which marked Gorbachev’s Murmansk Initiative. Instead, Arctic policy focuses on maintaining or regaining regional hegemonic and superpower status, which is for the most part linked domestically with nationalistic rhetoric. As the first Arctic rim state, in 2001 Russia filed an application to the United Nations Continental Shelf Commission (Baker 2010: 258) to extend their utilization rights for the seabed of the continental shelf beyond the 200 miles of the EEZ. The application claimed almost half of the Arctic Ocean Basin. That this is primarily symbolic politics seems evident from the fact that a large portion of the resources to be developed are already undisputedly *within* the national EEZ. The result of a renewed review of the submission, which was initially returned, and the Continental Shelf Commission’s anticipated recommendation regarding the submission based on scientific criteria are ultimately as uncertain as the question of whether Russia will unilaterally secure its claims should the decision not turn out in its favor (Proelss/Müller 2008: 682). Assessment of Russia’s Arctic policy generally fluctuates between geopolitically oriented power politics supported by saber-rattling campaigns (Smith/Giles 2007; Zyśk 2009), on the one hand, and repeated statements of interest in cooperation on the other. The latter statements are gladly ignored by all-too-willing references to the Russian “*Sturm und Drang* approach” (Kefferpütz 2010: 8). In particular, Russia’s most recent behavior in its development of the Shtokman field, to date the largest known natural gas field in the Arctic region, appears to show the direction matters are taking. It is regarded as evidence of their preference for an exclusive Arctic policy of little transparency: “One could get the impression that cuddly multilateral cooperation is acceptable, as long as it does not deal with really big issues, which are handled in bilateral or narrow ad hoc multilateral settings” (Øverland 2008: 12). This suggests that no commitment to more comprehensive cooperation is to be expected from the Russian side. However, the Russians have so far understood how to utilize international cooperation for the technical, financial and political support of their projects. They will, therefore, be interested in further cooperation and its project-based reinforcement. The status quo might possibly be enough for that. At the same time, the Russians know that, for example, the Norwegians also expect concessions and do not want to allow themselves to be exploited. For this reason, the Russians will not be able to turn a completely blind eye to the desire for a coherent policy.

Norway regards cooperation with Russia over the exploitation of fish stocks – but also in particular over oil and gas deposits in the Barents Sea – as an exemplary project within a “European dialogue”: “Our vision is that the Barents Sea should become a ‘sea of cooperation’” founded on ecosystem-based management (Norway 2007: 5, 16, 18). The cooperation envisaged by Norway also includes plans for setting up an economic and industrial cooperation zone which should encompass both Norwegian as well as Russian territory. Norway’s 2006 application to the Continental Shelf Commission has been approved.

Concerning the question whether a new Arctic order is needed, at an event organized by the European Parliament – which had recommended a comprehensive new order for the Arctic based on the model of the Antarctic Treaty (EU Parliament 2008) – the

Norwegian Foreign Minister, Jonas Gahr Støre, stated unequivocally that a “comprehensive legal regime” already existed in the form of the UNCLOS, so that no new rules were needed: “Calls for a new legal regime risk creating uncertainty, and may undermine the existing framework” (Støre 2008: 4). Unlike the Antarctic, the problems of regulation of the Arctic are “definitely not about territory over which states have sovereignty” (Støre 2008: 2). Despite its clear geopolitical and economic interests, it is widely accepted that Norway recognizes the complexity of the Arctic with its pronounced climate change and wishes to act accordingly (Jensen/Rottem 2010). Nonetheless, the Norwegians remain realistic. For this reason, the model of integrated multi-level governance could appeal to them.

Denmark's Arctic policy is largely shaped by the efforts of the Greenlanders to achieve autonomy (90% of the 56,400 inhabitants are Inuits).⁷³ For this reason the Danes have until now placed the Arctic Council at the center of their Arctic policy as a “political framework” (Denmark 2009; Petersen 2009; Møller 2009). Although the country has also prepared an application for submission to the Continental Shelf Commission, Denmark's claims, unlike those of Norway and Russia, apply to scarcely disputed territories. As co-initiator of the Ilulissat Declaration, Denmark was a driving force behind informal mini-multilateralism. Even if this meant a clear rejection of a fundamental new regulation along the lines of the Arctic Treaty, at the same time, the Danes do not want this action to be interpreted as a weakening of the Arctic Council. Consequently, they must achieve a balancing act with integrated multi-level governance.

The concept of integrated multi-level governance would offer *non-Arctic states* interested in individual aspects of cooperation a starting point for participation in Arctic governance. Together with the Arctic states they could assume the task of “mainstreaming” governance instruments and norms which also go beyond the Arctic. Recently, for the second time Germany's government called an Arctic conference at which it facilitated dialogue from the perspective of an interested third party. If this engagement by Germany is maintained, the topics of, for example, biodiversity and exploitation of living resources would suggest themselves. Extensive exchanges with a view to an entire series of international treaties could be organized in these areas – also from the perspective of an interested third party: a large proportion of the migratory birds which sojourn in Germany's biosphere reserves and Wadden Sea National Parks while on their migratory journeys, hatch their young in the Arctic; a large proportion of the fish eaten in Germany comes from there; as did Knut.

73 See Act on Greenland Self-Government, 2009; www.spiegel.de/politik/ausland/0,1518,631641,00.html (3 April 2012).

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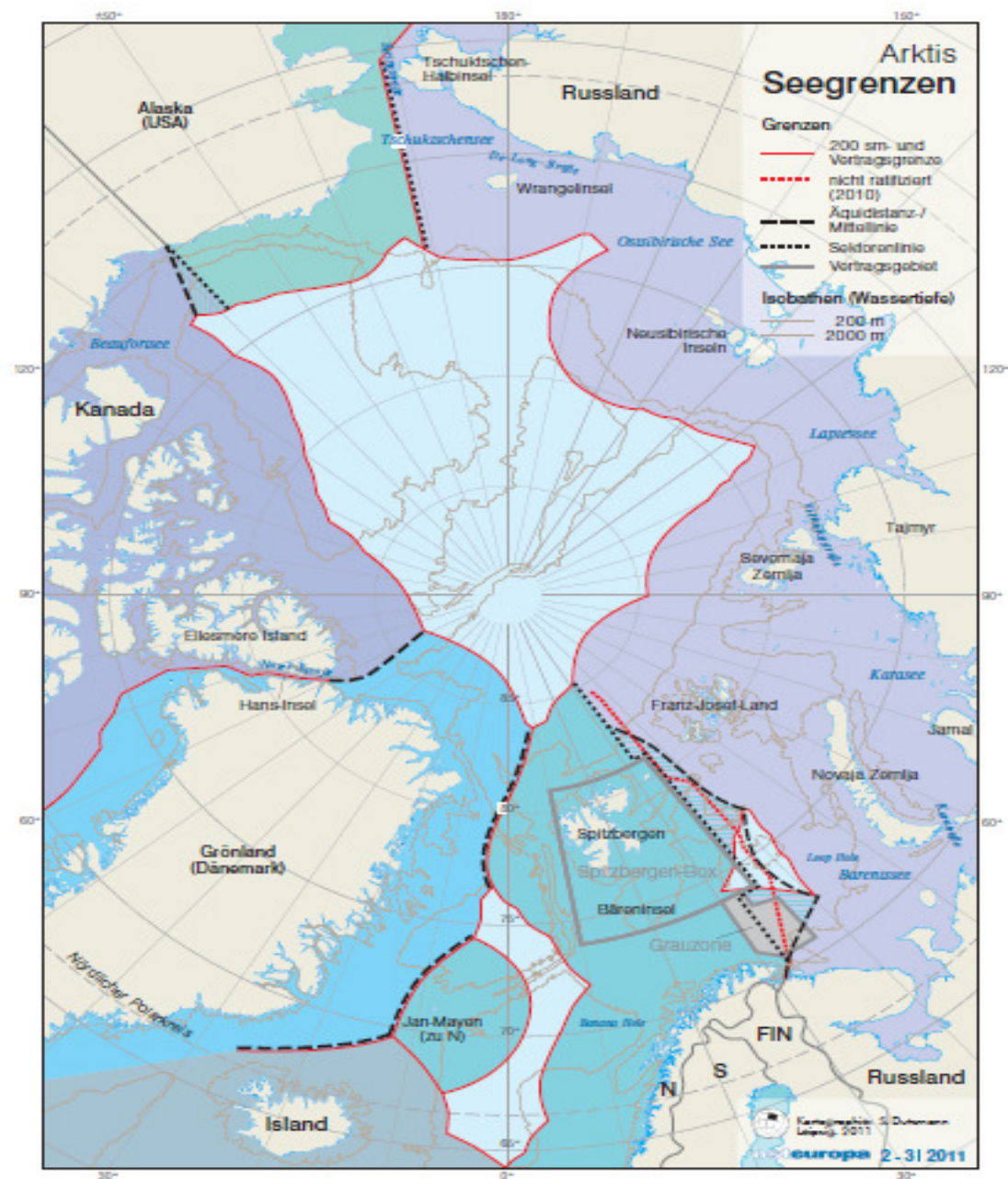
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List of abbreviations

ACIA	Arctic Climate Impact Assessment
AEPS	Arctic Environmental Protection Strategy
AEWA	Agreement on the Conservation of African-Eurasian Migratory Waterbirds
AHDR	Arctic Human Development Report
AMAP	Arctic Monitoring and Assessment Programme
AMEC	Arctic Military Environmental Cooperation
AMSA	Arctic Marine Shipping Assessment
ATS	Antarctic Treaty System
AWPPA	Arctic Waters Pollution Prevention Act
EEZ	Exclusive Economic Zone
CAFF	Conservation of Arctic Flora and Fauna
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EPPR	Emergency Prevention, Preparedness and Response
EU	European Union
GRID	Global Resource Information Database
IBRU	International Boundaries Research Unit
ILO	International Labour Organization
IMO	International Maritime Organization
ISA	International Seabed Authority
IWC	International Whaling Commission
MARPOL	International Convention for the Prevention of Marine Pollution from Ships
NAFO	Northwest Atlantic Fisheries Organization
NAMMCO	North Atlantic Marine Mammal Commission
NATO	North Atlantic Treaty Organization
NEAFC	North East Atlantic Fisheries Commission
NGO	Non-Governmental Organization
NPAFC	North Pacific Anadromous Fish Commission
NSIDC	National Snow and Ice Data Center
OSPAR	Convention for the Protection of the Marine Environment of the North-East Atlantic
PAME	Protection of the Arctic Marine Environment
POP	Persistent Organic Pollutant
SOAER	State of the Arctic Environment Report
SOLAS	International Convention for the Safety of Life at Sea
SPS	Science for Peace and Security
UNCLOS	United Nations Convention on the Law of the Sea
SWIPA	Snow, Water, Ice, Permafrost in the Arctic
UNEP	United Nations Environment Programme
WWF	World Wide Fund for Nature



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